IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 964 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
KANUBHAI RAVJIBHAI PATEL

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Appearance :
MR IM PANDYA APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 09/05/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Additional Sessions Judge, Second Fast Track Court, Navsari, on 15th of February, 2006, in Sessions Case No. 163 of 1997, whereby the present respondent – Kanubhai Ravjibhai Patel came to be acquitted by the Sessions Court for the offence punishable under Section 325 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

2 As per the prosecution case, the complaint of this incident was offered by Rameshbhai Dhirubhai Patel, resident of village Ghatki, Taluka Chikhli, District – Navsari. It appears that, during trial, complainant Rameshbahi Dhirubhai Patel died. According to the complaint, Rameshbhai had been to Bilimora for his personal work on 16th of June, 1995 and thereafter he returned to Chikhli at about 11.00 p.m. from Bilimora, and from Bilimora he started towards his village Ghatki. While he was passing through Nishal Falia, near the house of the accused at about 23.30 hours, the accused suggested him to stop. The complainant stopped there and between them exchange of words took place about withdrawal of the cases filed by the complainant against the accused. In the said exchange, accused was

provoked and inflicted a blow on the head of the complainant by one iron rod, and due to this injury, complainant started bleeding from the wound inflicted. The complainant thereafter on his motorcycle, straightaway reached to the house of one Amratbhai Manilal Patel, Ex-Sarpanch of the village and informed him about the incident which had taken place. Amratbhai advised the complainant injured to go to the police station and to file a complaint. Therefore, on 17th of June, 1995, at about 00.30 hours, both of them reached at Chikhli Police Station and offered the complaint. The said FIR was registered as Crime Register No. 158/95 and the investigation was entrusted to Police Inspector Harendrasinh Kiritsinh Rana, and after investigation by him as well as his subsequent Investigating Officer, a charge sheet came to be submitted in the Court of learned Magistrate against the accused. The case was committed to the Court of Sessions and the learned Additional Sessions Judge framed charges for the above said offence against the accused vide Exhibit-1 on 14th of March, 2000. The accused pleaded not guilty and, hence, the prosecution examined witnesses and produced documentary evidence on record. Thereafter, on evidence being over, a further statement of the accused was recorded by the Trial Judge under Section 313 of the Criminal Procedure Code. The defence of the accused was of total denial of the incident as narrated by the prosecution, and in explanation, the accused stated

that he was framed by the complainant in the above said criminal case.

3 After hearing the prosecution as well as defence, the learned Trial Judge came to the above conclusion of acquitting the accused for the above said charges, as aforesaid, and, hence, this Appeal by the State. The learned APP Mr. I.M. Pandya was heard in detail in respect of this Appeal at this stage of admission. We have called for the Record and Proceedings from the Trial Court and learned APP has supplied xerox copies of the evidence and necessary documents. We have carefully gone through the evidence recorded during trial on vital features and reasonable probabilities of the case at this stage.

4 According to the prosecution case, the prosecution has examined seven witnesses and produced on record documents, like, panchnama of scene of offence, panchnama of discovery of weapon i.e. iron rod, complaint and medical certificate in respect of injuries of the complainant.

5 The prosecution case can be examined afresh by us and the evidence of witnesses recorded during trial can be appreciated independently. This is an acquittal Appeal, and as per the established

law, unless and until, the reasons given by the Trial Court for the acquittal, are against the weight of the evidence recorded during the trial and are perverse, no interference is allowed in the order of acquittal lightly. Therefore, the case of the prosecution is examined by us as under :

5.1 PW-1 Sureshbhai Ramanbhai Patel, is examined at Exhibit-33. He was not an eye witness. He stated in his deposition that he heard shouts from his Falia that accused had caused injuries to his brother Rameshbhai with iron rod and, therefore, he went to the house of his brother and found that Rameshbhai was lying on the ground and was bleeding from the wound on his head. Rameshbhai talked to him that the accused had inflicted injuries on his head. Thereafter, Rameshbhai offered a complaint and was taken to the Civil Hospital. In his cross-examination, he admitted the fact that he did not state before the Police that on hearing shouts, he reached near the house of his brother Rameshbhai and found that the accused had inflicted an iron rod blow on the head of Rameshbhai. He admitted that between the parties, some other criminal litigations were going on.

5.2 PW-2 Vajirbhai Joghibhai, examined at Exhibit-34, is panch of panchnama at Exhibit-35 of scene of offence. He stated that

he was called at the police station and was asked to sign a ready panchnama which he had signed. Thus, this witness did not support the prosecution case and was declared hostile.

5.3 PW-3 Manubhai Mervanbhai is examined at Exhibit-36, a second panch of panchnama at Exhibit-35 and he has also not supported the prosecution case and the panchnama. He has also been declared as hostile.

5.4 PW-4 Kiranbhai Kikubhai is examined at Exhibit-37 and he is panch of panchnama at Exhibit-38. According to the prosecution case, while arresting the accused, by his own will, the accused also produced an iron rod before the police, which was seized by the police vide panchnama Exhibit-38, of which, PW- 4 Kiranbhai Kikubhai was one of the panch. However, this was a recovery panchnama, and this panch Kiranbhai Kikubhai did not support the prosecution case in any respect. He stated to the extent that he was called by police on 25th of September, 1995 at the police station and signed the panchnama at Exhibit-38, but he did not support the fact that the accused who was his uncle, produced before the police by his free will an iron rod alleged to have been used in the said crime.

5.5 PW-5 Dr. Nitinbhai Bhanabhai Patel is examined at Exhibit - 39. This witness was serving as Medical Officer in Health Center at Chikhli. On 17th of June, 1995 Rameshbahi Dhirubhai Patel was brought to him with police yadi and he examined Rameshbhai Dhirubhai Patel. The patient was brought to him at 1.30 hours. According to the certificate, he was conscious and was treated as outdoor patient. He had one CLW on scalp on head at occipital region and one incised wound of 1 cm in length, ½ cm broad and it was not actively bleeding. According to the Doctor, he had no other injuries. The witness opined that these injuries were simple and could be cured within 7 to 10 days, if no complication would arise.

5.6 PW-6 Hansaben Rameshbhai Patel, widow of complainant Rameshbhai Dhirubhai Patel, is examined at Exhibit-42. She is not an eye witness and stated that her husband Dhirubhai died on 1st of June, 2005. On the day of incident, his husband returned to their house at about 11.00 p.m. and stated to her that accused had given a blow of iron road on his head. According to the witness, her husband was bleeding from the wound, and according to the complainant, the dispute took place on account withdrawal of nomination of election form. She has been cross-examined by the defence.

5.7 The last witness PW-7 Harendrasinh Kirtisinh Rana is examined at Exhibit 43. He was serving as PSI in Chikhli Police Station. On 17th of June, 1995. On that day, complainant Rameshbhai Dhirubhai Patel, had been to Police Station and offered his complaint which was registered by PSO and investigation was entrusted to him. He draw the panchnamas and recorded statements of witnesses. Thereafter he was transferred from Chikhli and remaining investigation was completed by his successor Mr. Vasava.

6 The complaint, which Rameshbhai Dhirubhai Patel had given to the police, is produced at Exhibit – 44. From the above evidence, it clearly appears that complainant Rameshbhai Dhirubhai Patel expired after filing of the charge sheet and, therefore, he could not be examined by the prosecution though the complaint is exhibited at Exhibit – 44, but the contents of the complaint could not be proved by the prosecution. Except that, all the witnesses, more particularly, witness Sureshbhai Ramanbhai and witness Hansaben, are the witnesses not of the incident, but the witnesses about what happened after the incident. So far as the evidence of Sureshbhai Ramanbhai is concerned, in his cross-examination, he admitted that he did not state before the police what he stated in his deposition that he heard shouts that the accused had given a blow with iron rod to the complainant Rameshbhai.

There are contradictions also in the prosecution case in the version of Hansaben and the prosecution story. According to the prosecution story, the complainant after the incident straightaway went to the house of the Sarpanch and thereafter to the hospital for treatment. While Hansaben stated that at about 11.00 to 12.00 p.m. the complainant Rameshbhai returned to their house and conveyed her that he had been beaten by the accused. In that view of the matter, it clearly appears that even at this stage it is required to be noted that there is no clinching evidence against the accused to connect him with the crime as no eye witness was examined. Unfortunately, only eye witness the injured complainant died after filing of the charge sheet and author of the injuries could not be proved. Though the Medical Officer is examined and according to him there were simple injuries on the head of the complainant, as afore stated. In this view of the matter, since there is no cogent evidence to connect the accused with the crime, the order of acquittal appears to be proper, in the facts and circumstances as discussed above. The learned Trial Judge also assigned the above said reasons for acquitting the accused in the above said case. In that view of the matter, no interference is required in the judgment and order impugned in this Appeal and, hence, the following order :

" Leave to Appeal is refused and this Criminal Appeal stands dismissed."

(J. R. VORA, J.)

(BANKIM.N.MEHTA, J.)

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